

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

MISSOURI STATE DEPARTMENT)
OF PUBLIC SAFETY,)
Jerry Lee, Director,)
P.O. Box 749)
Jefferson City, Missouri 65102)
(573)751-4905)
Petitioner,)
v.)
RICHARD PACHECO)
331 N. 21ST Street)
Kansas City, KS 66102)
Respondent.)

FILED
JUN 10 2014
ADMINISTRATIVE HEARING
COMMISSION

Case No. _____

COMPLAINT FOR DISCIPLINE OF PEACE OFFICER LICENSE

COMES NOW the Director of the Department of Public Safety, by and through Assistant Attorney General Curtis Schube, and for his petition for peace officer discipline states:

1. Petitioner is the Director of the Department of Public Safety who has the authority to issue, suspend or revoke peace officer licenses as outlined in Chapter 590 of the Revised Statutes of Missouri and the Rules and Regulations of the Director of the Department of Public Safety.

2. Respondent, Richard M. Pacheco ("Pacheco"), is licensed as a peace officer by the Department of Public Safety, license no. 50766. This license is current and active and was so at all times relevant herein.

3. Pursuant to Chapter 621 RSMo, and § 590.080, RSMo, this Commission has jurisdiction to receive this Complaint and determine whether cause exists for Petitioner to discipline Respondent's peace officer certification.

4. Section 590.080.2, RSMo, provides that when Petitioner has knowledge of cause to discipline a peace officer, he may file a complaint with the Administrative Hearing Commission as provided by Chapter 621, RSMo.

5. Section 590.080.1, RSMo, provides the following:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

6. On or about November 13th, 2011, Pacheco committed the crime of Giving a False Alarm, a class A misdemeanor, in violation of Kansas statute K.S.A. 21-6207, when he unlawfully made a call for emergency service assistance, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed. K.S.A. 21-6207 states in relevant part:

(a) Giving a false alarm is:

(2) making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 et seq., and amendments thereto, knowing at the time of

such call that there is no reasonable ground for believing such assistance is needed.

7. On or about July 30, 2013, in the District Court of Wyandotte County, Kansas, plead *nolo contendere* to the charge of False Alarm, K.S.A. 21-6207, and was sentenced to 12 months in jail, sentence suspended, with a term of six months of probation, a requirement that Pacheco give up his Kansas law enforcement commission, and court costs.

8. Also on November 13th, 2011, Pacheco committed the crime of Assault and/or Aggravated Assault, when he drew a firearm on Dan Orr and approached Dan Orr in a threatening manner, causing Orr reasonable apprehension of immediate bodily harm, in violation of Kansas Statute K.S.A. 21-5412 in violation of which states in relevant part:

- (a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;
- (b) Aggravated assault is assault, as defined in subsection (a), committed:
- (1) With a deadly weapon[.]

8. Also on November 13th, 2011, Pacheco committed the crime of Battery and/or Aggravated Battery, when he performed a takedown maneuver, and subsequently forcefully detained, upon Dan Orr, with a drawn firearm, in a rude, insulting and angry manner in a manner whereby great

bodily harm, disfigurement or death could have been inflicted, in violation of Kansas Statute K.S.A. 21-5413, which states in relevant part:

(a) Battery is:

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;

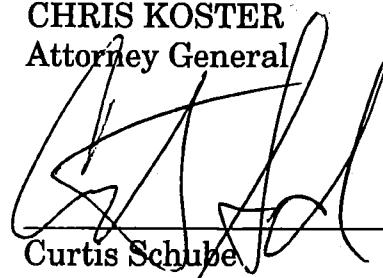
9. Also on November 13th, 2011, Pacheco committed the crime of Criminal Restraint, when he knowingly and without legal authority restrained Dan Orr so as to interfere substantially with Orr's liberty, in violation of Kansas Statute K.S.A. 21-5411, which states in relevant part:

(a) Criminal restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty.

WHEREFORE, the Director prays that this Commission find that
Respondent's peace officer certification is subject to discipline.

Respectfully submitted,

CHRIS KOSTER
Attorney General

A handwritten signature in black ink, appearing to read "Curtis Schube", is written over a horizontal line.

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Attorneys for Petitioner

Before the
Administrative Hearing Commission
State of Missouri

DIRECTOR OF DEPARTMENT OF PUBLIC)
SAFETY,)
Petitioner,)
vs.) No. 14-0948 PO
RICHARD PACHECO,)
Respondent.)

CONSENT ORDER

The Director of the Department of Public Safety filed a complaint seeking to discipline the peace officer license of Richard M. Pacheco. Section 590.080¹ gives us jurisdiction.

On September 18, 2014, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *See Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995) (court is bound by and must give effect to parties' stipulations of fact). We conclude that the licensee is subject to discipline under § 590.080.1(2). We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the Director's decision or the parties' agreement. Section 590.080.2 and .3.

No statute authorizes us to determine whether the licensing agency has complied with the provisions of § 621.045.4. We have no power to superintend agency compliance with statutory procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W. 2d 445, 450 (Mo. banc 1985). Therefore, we do not determine whether the agency complied with such procedures.

SO ORDERED on September 19, 2014.

KAREN A. WINN
Commissioner

¹Statutory references are to RSMo Supp. 2013 unless otherwise noted.